

House Study Bill 96 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ANDERSON)

A BILL FOR

1 An Act relating to the conveyance or encumbrance of a homestead
2 by a spouse.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 561.13, Code 2011, is amended to read as
2 follows:

3 **561.13 Conveyance or encumbrance.**

4 1. A conveyance or encumbrance of, or a contract to convey
5 or encumber the homestead, if the owner is married, is not
6 valid, unless and until the spouse of the owner executes may
7 be invalidated by a spouse who has not executed the same or a
8 like instrument, or a power of attorney for the execution of
9 the same or a like instrument. However, when the homestead is
10 conveyed or encumbered along with or in addition to other real
11 estate, it is not necessary to particularly describe or set
12 aside the tract of land constituting the homestead, whether the
13 homestead is exclusively the subject of the contract or not,
14 but the contract may be enforced as to real estate other than
15 the homestead at the option of the purchaser or encumbrancer.

16 2. If a spouse who holds only homestead rights and surviving
17 spouse's statutory share in the homestead specifically
18 relinquishes homestead rights in an instrument, including
19 a power of attorney constituting the other spouse as the
20 husband's or wife's attorney in fact, as provided in section
21 597.5, it is not necessary for the spouse to join in the
22 granting clause of the same or a like instrument.

23 3. A conveyance or encumbrance or a contract to convey or
24 encumber the homestead is not invalid under subsection 1 if any
25 of the following apply:

26 a. The nonsigning spouse's interest is terminated by divorce
27 or other order of the court.

28 b. The nonsigning spouse voluntarily abandons the homestead
29 for a minimum of six consecutive months.

30 c. Section 614.15 or 654.12B applies.

31 d. Voiding the conveyance or encumbrance or the contract
32 to convey or encumber the homestead would unjustly enrich the
33 nonsigning spouse or any party to the transaction or the series
34 of transactions associated with it.

35 4. For the purposes of this section, "nonsigning spouse"

1 means a spouse who has not executed a conveyance or encumbrance
2 or a contract to convey or encumber the homestead, the same or
3 a like instrument, or a power of attorney for the execution of
4 the same or a like instrument.

5 5. For the purposes of this section, a document that
6 provides all of the following meets the requirement of a "same
7 or a like instrument":

8 a. Includes information sufficiently identifying the
9 original conveyance, encumbrance, or contract.

10 b. Releases the homestead rights and surviving spouse's
11 statutory share in the homestead.

12 EXPLANATION

13 This bill provides that the conveyance or encumbrance of a
14 homestead by a married person who is the owner of the homestead
15 is not automatically invalid if the person's spouse has not
16 joined in the conveyance or encumbrance. Such a spouse must
17 take action to invalidate the conveyance or encumbrance.

18 The bill further provides that a conveyance or encumbrance
19 or a contract to convey or encumber the homestead is not
20 invalid under subsection 1 if the nonsigning spouse's interest
21 is terminated by divorce or other order of the court, the
22 nonsigning spouse voluntarily abandons the homestead for
23 a minimum of six consecutive months, Code sections 614.15
24 (relating to the general statute of limitations for the failure
25 of a spouse to convey or transfer an interest in real estate)
26 and 654.12B (relating to the priority status of a purchase
27 money mortgage lien over all other mortgages) applies, or if
28 voiding the conveyance or encumbrance would unjustly enrich the
29 nonsigning spouse or any party to the transaction.

30 The bill defines a "nonsigning spouse" as a spouse who
31 has not executed a conveyance or encumbrance or the contract
32 to convey or encumber the homestead, the same or a like
33 instrument, or a power of attorney for a same or a like
34 instrument. A "same or a like instrument" document must
35 include information sufficiently identifying the original

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1 conveyance, encumbrance, or contract and must release the
2 homestead rights and the surviving spouse's statutory share in
3 the homestead.